

IN THE MATTER OF THE CLAIM
OF QUYNH NGUYEN
CLAIMANT,
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF DANIEL G. STEEN,
T/A CHEASPEAKE HOME
REMODELING AND DESIGN, LLC,
RESPONDENT

* BEFORE JEROME WOODS, II,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No: DLR-HIC-02-15-20064
* MHIC No: 12 (05) 366
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PROPOSED DECISION

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STATEMENT OF THE CASE

On July 11, 2013, Quynh Nguyen, (Claimant), filed a claim (Complaint) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$20,000.00 for alleged actual losses suffered as a result of work performed pursuant to a home improvement contract with Daniel G. Steen, trading as Chesapeake Home Remodeling and Design, LLC, (Respondent).

On February 3, 2016, I held a hearing at the Office of Administrative Hearings in Kensington, Maryland. §§ 8-312(a), 8-407(e) (2015).¹ The Claimant represented herself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent, even though having actual notice of the hearing, failed to appear.²

The contested case provisions of the Administrative Procedure Act; the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf:

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| CL #1 | Contract, Chesapeake Home Remodeling and Design, March 7, 2011 |
| CL #2 | Copies of Claimant Check receipt (\$10,000.00) December 28, 2011, (\$10,000.00) March 7, 2011 |
| CL #3 | Nineteen Color photographs of room addition, printed October 17, 2015 |
| CL #4 | Email from the Respondent regarding Claimant, May 22, 2013 |
| CL #5 | Inspection Description, undated |
| CL #6 | American Remodeling Corp., estimate July 15, 2014 |

¹ Unless otherwise noted, all citations of the Business Regulation Article hereinafter refer to the 2015 Replacement Volume.

² Notices for the hearing were mailed to the Respondent at his address of record via certified and United States mail. The notices were not returned. I find that the Respondent had actual notice of the hearing under section 8-312(d) of the Business Regulation Article and section 10-209(c) of the State Government Article.

I admitted the following exhibits on the Fund's behalf:

FD #1	Hearing Notice, November 20, 2015 and Hearing Order, June 2, 2015
FD #2	Respondent Licensure History printout, February 2, 2016
FD #3	Home Improvement Claim Form, July 8, 2014 with attached MHIC letter, July 17, 2013

Testimony

The Claimant testified on her own behalf and did not present any other witnesses.³

The Fund did not call any witnesses.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 4085505 (FD #2).
2. On or about March 7, 2011, the Claimant and the Respondent entered into a contract (Contract) to build an addition on the Claimant's home. Pursuant to the contract, the addition was to be constructed of plywood, have cathedral ceilings, one double door, one single door, insulated floor, drywall, and a ceiling fan. Additionally, the Respondent was to install floor tile and perform all necessary grouting.
3. The total cost of the contract was \$30,000.00.
4. In accordance with the contract, the Claimant paid a deposit of \$10,000.00 on March 11, 2011, leaving a balance of \$20,000.00.
5. The Respondent began the work in June 2011.
6. Between the end of June 2011 and the first of October 2011, the Respondent did not perform any work.

³ A Vietnamese interpreter was utilized to assist with communication.

7. Approximately in the middle of October 2011, the Respondent resumed work on the project.

8. When the work resumed on the addition, the Respondent installed the foundation and floor, plywood walls, windows, exterior siding, columns and the roofing.

9. The Respondent improperly installed the framing, plywood, windows and siding.

10. On December 28, 2011, in accordance with the contract, the Claimant made a second payment of \$10,000.00.

11. On or about December 28, 2011, the Respondent returned to the Claimant's home to make repairs to the addition.

12. The Claimant did not complete the repairs on December 28, 2011.

13. In June 2012, a representative from the local county inspected the Respondent's work. The addition did not pass inspection.

14. The Claimant called the Respondent numerous times subsequent to December 28, 2011 and the inspection in order to get him to perform the repairs and complete the addition.

15. The Respondent did not return the Claimant's phone calls and did not return to the project since leaving it on December 28, 2011.

16. The addition sustained water and mold damage because of the defects in the construction.

17. The Respondent left debris and materials at the project at the time he stopped working.

18. The Respondent paid cash to an unlicensed worker identified as Duc to clean up the project area and make some repairs to the addition.

19. The Claimant does not have any receipts or verifications for how much she paid Duc.

20. On July 15, 2014, the Claimant obtained an estimate from American Remodeling Corp. The purpose of the estimate was to determine the cost to correct the Respondent's work and complete the project.

21. The cost to repair and complete the project is \$20,000.00.

DISCUSSION

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor...." Md. Code Ann., Bus. Reg. § 8-405(a) (Supp.2013). *See also* COMAR 09.08.03.03B(2). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401 (2010). For the following reasons, I find that the Claimant has proven eligibility for compensation.

First, the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant.

Second, the Respondent performed unworkmanlike and inadequate home improvement by improperly installing the framing, plywood, roofing and siding for the addition. It is undisputed that the Claimant hired the Respondent to construct and install an addition to her home. It is also undisputed that after the Respondent's work, the Claimant called the Respondent to come back to the Property because the work did not pass inspection and there were numerous deficiencies. Despite numerous telephone calls made by the Claimant to the Respondent to complete and repair the work on the home addition, the Respondent did not respond to the Claimant.

Pictures of the addition confirm that that the addition failed inspection, contained defects and was not completed. As a result, I am compelled to believe that the improper construction of the addition must be attributed to the work performed by the Respondent and that the Respondent abandoned the project.

I conclude that the Respondent performed inadequate and unworkmanlike home improvement work at the Property and abandoned the project.

The Fund agreed that the Claimant incurred an actual loss as a result of the incomplete and inadequate work of the Respondent, who was licensed with the MHIC at all times relevant to this matter. I agree with the parties and conclude that the Claimant is entitled to compensation from the Fund.

Having found eligibility for compensation, I now turn to the amount of the award. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest and none are sought here. COMAR 09.08.03.03B(1). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). One of those formulas, as follows, offers an appropriate measurement in this case:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

Using this formula, the Claimant's actual loss is \$10,000.00 calculated as follows:

Amount paid to the Respondent	\$20,000.00
Amount required to correct the inadequate work	<u>+\$20,000.00</u>
Total	\$40,000.00
Contract price	<u>-\$30,000.00</u>
Actual loss	\$10,000.00

Hence, the Claimant is entitled to reimbursement in the amount of \$10,000.00 from the Fund. The Claimant testified that she paid an individual identified as Duc, approximately \$10,000.00 to make repairs to the Respondent's work. Duc is not a licensed contractor and the Claimant offered no verifications of any amount paid to Duc. She guessed that she paid \$10,000.00. Consequently, any payments to Duc cannot be considered in the actual loss amount.

The Fund agrees with the actual loss amount.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual/compensable loss of \$10,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010), 8-405 (Supp. 2014); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,000.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of at least ten percent (10%) as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

April 11, 2015
Date Decision Issued

JW/cj
#161709

Signature on File

Jerome Woods, II
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 6th day of June, 2016, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

J. Jean White

***I. Jean White
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION